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NGUYEN, KIEN T				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/758,019
Filing Date: January 16, 2004
Appellant(s): HOJO ET AL.

William E. Lyddane
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/24/2008 appealing from the Office action mailed 05/29/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,988,300	Yamaguchi et al.	01-1991
6,332,307	Friedson	12-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 13-18, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamaguchi et al in view of Friedson.

Yamaguchi disclosed a machine comprising a seat (2); a drive mechanism (16) that imparts a swinging motion to the seat; the seat has a saddle shape (claim 2); an elevator (168-170) provides to adjustability to the height of the seat and repeatedly raised and lowered the seat during operation of the drive mechanism (claims 13-17); a swinging motion (motor 16 and swing adjusting device 7) (see Fig. 1) comprising three degrees of freedom of movement in the form of a longitudinal reciprocating linear motion and reciprocating pivoting motions around a fore-aft (Figs. 3-5) and transverse axes (Fig. 7-8) (claims 21 and 22). It is noted that the machine of Yamaguchi et al failed to teach the expandable and contractible member provided on a seating surface of the seat as set forth in claims 1-12 and 19. However, Friedson disclosed a saddle

assembly comprising an expandable and contractible member in a form of an air bladder (25) (see Fig. 7) providing on each side of the saddle which inherently including positions in oppose the thighs and knees of the user; and a mechanism (26) for expanding and contracting the member (see column 4, lines 64-67 and column 5, lines 1-9). Fig. 7 shows a side view of the saddle which has only one inflatable bladder (25). The saddle of Friedson has two panels (15) (see Fig. 2) and each panel (15) has an inflatable bladder which constitute first and second expandable and contractible elements on opposite side of the seat (claims 4-10) (see col. 4, line 64 to col. 5, line 7). Therefore, it would have been obvious to one of ordinary skill in the art to modify the machine of Yamaguchi et al by integrally (claims 23 and 24) adding the bladders as taught by Friedson for the purpose of providing comfort for the user as well as enhancing the motion of the seat during operation.

Regarding the limitation "automatically" in claims 1 and 18, it is well settled that it is not an invention to broadly provide a mechanical or automatic means to replace manual activity which has accomplished the same result see *In re Venner*, 120 USPQ 192 (CCPA 1958).

Response to Arguments

In response to appellants' argument concerning the combination of Yamaguchi and Friedson failed to teach a mechanism that "repeatedly" expands and contracts the expandable and contractible member as recited in claims 1 and 18, the term "repeatedly" does NOT limit as to **how or how often, and/or when** the mechanism "repeatedly" expands and contracts the member. It is submitted that the valve (26) of

Friedson is conceivably capable of being repeatedly inflated (expanding) and deflated (contracting) the bladder (25). Such interpretation of Friedson clearly meets the claimed invention in the above explanation. Regarding the limitation "automatically" in claims 1 and 18, see the above explanation *In re Venner*, 120 USPQ 192 (CCPA 1958).

In response to applicant's argument that the prior art of record failed to teach the contractible member in "alternately repeating upwardly-outwardly and down-inwardly directions during operation of the drive mechanism to provide compound motion of the seat" as set forth in claims 1 and 18, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, the appellants failed to specifically point out **the structural differences** between the claimed invention and the combination of Yamaguchi et al and Friedson except the assertion that the combination of Yamaguchi et al and Friedson cannot perform the intended use/function. For example, claim 1 merely recites "a mechanism" that performs certain functions. There are no specific structural features of such mechanism claimed. It is respectfully submitted that the combination of the balance practicing machine of Yamaguchi et al are modified by Friedson as discussed above meets all of the structural features as claimed and such combination is capable of performing the intended use as claimed.

In response to appellants' argument concerning claims 4-8, the above explanation clearly pointed out that the saddle of Friedson has two panels (15) (see Fig.

2) and each panel (15) has an inflatable bladder which constitute first and second expandable and contractible elements on opposite side of the seat.

In response to appellants' argument concerning claims 15, 17, and 20, the above explanation clearly pointed out an elevator (168-170) provides to adjustability to the height of the seat and repeatedly raised and lowered the seat during operation of the drive mechanism. Accordingly, it is submitted that the limitations in claims 15, 17, and 20 are met by the above explanation.

In response to appellants' argument concerning claims 21 and 22, the above explanation clearly pointed out a swinging motion (motor 16 and swing adjusting device 7) as shown in Fig. 1 comprising three degrees of freedom of movement in the form of a longitudinal reciprocating linear motion and reciprocating pivoting motions around a fore-aft (Figs. 3-5) and transverse axes (Fig. 7-8). Accordingly, it is respectfully submitted that the limitations in claims 21 and 22 are met by the above explanation.

In response to appellants' argument concerning claims 23 and 24, it is inherent that when one of ordinary skill in the art modify the seat of Yamaguchi et al with the bladders (25) as taught by Friedson, the bladders would have to be an integral part of the seat. Accordingly, it is respectfully submitted that the limitations in claims 23 and 24 are met by the above explanation.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3711

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Kien T. Nguyen/

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